

PROCEDURE FOR MOTIONS TO LIFT THE AUTOMATIC STAY

1. Counsel should call or email** (sunterra@mdb.uscourts.gov) the courtroom deputy by noon the day before the motion to lift stay is scheduled to advise the Court of the status of the motion.
2. If the parties have worked out a consent and counsel for the movant has notified the Court by noon the day before the hearing is scheduled, the Court can remove the hearing from the docket.
3. If the case is to proceed, the Court must be informed of the time estimate for the hearing on the motion to lift stay.

** Please note: Any email to the courtroom deputy regarding motions to lift stay **MUST** include “Lift Stay” as the subject of the email.

RULE 4001-1 AUTOMATIC STAY - RELIEF FROM

(a) Form of Motion. A motion for relief from the automatic stay of 11 U.S.C. § 362(a) must be titled "Motion for Relief from Stay" or a similar phrase. The motion's caption must be in the format used in Official Bankruptcy Form 16D for an adversary proceeding. The motion may not be combined with a request for any other relief, except for adequate protection or for relief from the co-debtor stay of 11 U.S.C. §§ 1201(a) or 1301(a).

(b) Contents of Motion for Relief from Stay. The following material, when applicable, must be included in a motion for relief from stay:

(1) A detailed statement of the debt owed to the movant;

(2) If periodic payments are in arrears, the amount of arrears accrued prepetition and the amount of arrears accrued postpetition;

(3) A description of the property encumbered;

(4) A description of the security interest involved, with attached documents that evidence the security interest and its perfection;

(5) A statement of the basis for the relief claimed, such as, a lack of adequate protection or the absence of equity and that the property is not necessary for an effective reorganization. The specific facts constituting cause shall be set forth if a motion is brought for cause;

(6) If movant asserts a valuation of the subject property, the motion should state the amount of the valuation, the date, and the basis therefor (appraisal, blue book, etc.);

(7) The specific nature of the relief from stay that is requested; and

(8) The proposed order accompanying the motion shall grant the specific relief requested in the motion.

(c) Service of Motion and Notice of Hearing.

(1) The Clerk will maintain a list of dates available for hearings on motions for relief from stay on the calendar of each judge of the court. The list will be posted in the public area of each division and published by such other means selected by the Clerk.

(2) Movant must select a hearing date from the list for the judge to whom the case is assigned that is more than twenty-one (21) days after the date of service.

(3) Movant must serve the motion for relief from stay with a hearing notice conforming to Local Bankruptcy Form B. The motion and hearing notice must be served upon all entities entitled to notice of the motion for relief from stay.

(d) Filing of Proof of Service. Within five (5) business days after service, the movant must file the motion for relief from stay, the notice of hearing, and a certificate of service covering both. The certificate must comply with Local Bankruptcy Rule 9013-4.

(e) Responses to Motions for Relief from Stay.

(1) Time. If no response to the motion for relief from stay is filed within seventeen (17) days after the date of the notice, the court may rule on the motion as unopposed.

(2) Form. The caption of the response must be the same as the form for the caption of the motion as set out in paragraph (a) above.

(3) Pleading. A response must include detailed answers to each numbered paragraph of the motion, in conformity with the requirements of Fed.R.Civ.P. 8(b) and (d). All defenses to the motion must be stated in the response.

(4) Response by Standing Chapter 12 and 13 Trustees. Standing Chapter 12 and Chapter 13 Trustees are served for informational purposes and are not required to respond to motions for relief from stay.

(f) Unopposed Motions. If a timely response opposing the relief requested is not filed to a motion served in accordance with this Rule, the court may grant or otherwise dispose of the motion before the scheduled hearing date.

(g) Requirements Under 11 U.S.C. § 362(e).

(1) Waiver. If a movant notices a hearing date more than thirty (30) days after the date of the filing of the motion, movant is deemed to have consented to the inapplicability of 11 U.S.C. § 362(e) through the day of the hearing on the motion for relief from stay.

APPENDIX A

IN RE:

Case No. _____
Chapter _____

vs.

NOTICE OF MOTION FOR RELIEF FROM STAY
AND HEARING THEREON

affected. You should read these papers carefully and discuss them with your lawyer, if you have one in this bankruptcy case. (If you do not have a lawyer, you may wish to consult one.)

If you do not want the court to grant the motion for relief from stay, or if you want the court to consider your views on the motion, then by _____ you or your lawyer must file a written response with the Clerk of the Bankruptcy Court explaining your position and mail a copy to: _____ *

[movant's attorney's name and address, or movant's name if pro se]

[names and addresses of others to be served]

If you mail rather than deliver, your response to the Clerk of the Bankruptcy Court for filing, you must mail it early enough so that the court will receive it by the date stated above.

The hearing is scheduled for _____, at _____, ** in Courtroom _____, United States Bankruptcy Court, _____.

IF YOU OR YOUR LAWYER DO NOT TAKE THESE STEPS BY THE DEADLINE, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION AND MAY GRANT OR OTHERWISE DISPOSE OF THE MOTION BEFORE THE SCHEDULED HEARING DATE.

DATE: _____ ★ ★ ★

Signature (Attorney or Movant if pro se)

Telephone No. _____

- [*] Insert date that is 17 days after
the date of this notice (service).
- [**] Insert date and time from list of
dates available for judge assigned
case that is more than 21 days
after the date of this notice.
- [***] Insert date notice served.

Local Bankruptcy Form B

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, 1998, copies of the notice and motion for relief from stay were served upon the party (parties) whose name(s) and address(es) are listed below:

(1)

(2)

(3)

(4)

(5)

(6)

Signature

Print Name

NOTE: Service must be made pursuant to Federal Bankruptcy Rule 7004

Local Bankruptcy Form B